

PATRICIA LEE

VS.

AND

Insurance Carrier

Claimant alleges accidental injury to her low back beginning in mid-April 2002 and continuing each and every working day thereafter. Respondent contends claimant has

failed to prove that she provided notice of accident within ten days as required by K.S.A. 44-520.

Claimant's testimony is that she talked to both the nurse in the dispensary and to respondent's assistant safety director, Jeannie Hall. While both Ms. Hall and Susan Williams, respondent's registered nurse, deny these allegations, it is apparent from the Order that the Administrative Law Judge concluded claimant's testimony was the more persuasive and credible. The Board, in assessing the credibility of witnesses, generally defers to an administrative law judge's decision in that regard. In this instance, claimant's testimony was sufficiently credible to convince the Administrative Law Judge to award the benefits requested. The Board affirms that finding.

Additionally, the first issue raised by respondent is not one over which the Board takes jurisdiction from a preliminary hearing under K.S.A. 44-534a or K.S.A. 2001 Supp. 44-551, and is, therefore, dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Nunc Pro Tunc Order For Medical Treatment of Administrative Law Judge Pamela J. Fuller dated September 26, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 2002.

BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant
Terry J. Malone, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Director, Division of Workers Compensation